

AMENDED IN ASSEMBLY AUGUST 29, 2006

AMENDED IN ASSEMBLY AUGUST 24, 2006

AMENDED IN SENATE MAY 17, 2005

AMENDED IN SENATE MAY 9, 2005

AMENDED IN SENATE APRIL 20, 2005

AMENDED IN SENATE FEBRUARY 23, 2005

SENATE BILL

No. 44

Introduced by Senator Torlakson

(Principal coauthor: Assembly Member Nunez)

January 4, 2005

An act to ~~amend 2985.8 of the Civil Code, and to amend~~ Section 11713.1 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 44, as amended, Torlakson. Vehicles: dealer document preparation charges.

Existing law makes it a violation of the Vehicle Code for the holder of a vehicle dealer's license to commit specified actions, including, among other things, to advertise the total price of a vehicle without including all costs to the purchaser at the time of sale, except taxes, vehicle registration fees, the California tire fee, as defined, emission testing fees not exceeding \$50, actual fees charged for certificates, finance charges, and a dealer document preparation charge, ~~and~~. *Existing law* prohibits the dealer document preparation charge from exceeding \$45. ~~Existing law regulates a vehicle lease contract, including \$45 as the maximum amount for document preparation.~~

This bill would increase to \$55 the maximum dealer document preparation charge.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 2985.8 of the Civil Code is amended to~~
2 ~~read:~~
3 ~~2985.8. (a) A lease contract shall be in writing and the print~~
4 ~~portion of the contract shall be printed in at least 8-point type and~~
5 ~~shall contain in a single document all of the agreements of the~~
6 ~~lessor and lessee with respect to the obligations of each party.~~
7 ~~(b) At the top of the lease contract, a title which contains the~~
8 ~~words "LEASE CONTRACT" or "LEASE AGREEMENT" shall~~
9 ~~appear in at least 12-point boldface type.~~
10 ~~(c) The lease contract shall disclose all of the following:~~
11 ~~(1) All of the information prescribed by Regulation M set forth~~
12 ~~in the manner required or permitted by Regulation M, whether or~~
13 ~~not Regulation M applies to the transaction.~~
14 ~~(2) A separate statement labeled "Itemization of Gross~~
15 ~~Capitalized Cost" that shall appear immediately following or~~
16 ~~directly adjacent to the disclosures required to be segregated by~~
17 ~~Regulation M. The Itemization of Gross Capitalized Cost shall~~
18 ~~include all of the following and shall be circumscribed by a line:~~
19 ~~(A) The agreed-upon value of the vehicle as equipped at the~~
20 ~~time of signing the lease.~~
21 ~~(B) The agreed-upon value and a description of each accessory~~
22 ~~and item of optional equipment the lessor agrees to add to the~~
23 ~~vehicle after signing the lease.~~
24 ~~(C) The premium for a policy of insurance.~~
25 ~~(D) The amount charged for a service contract.~~
26 ~~(E) A charge for an optional debt cancellation agreement.~~
27 ~~(F) Outstanding prior credit or lease balance.~~
28 ~~(G) An itemization by type and agreed-upon value of each~~
29 ~~good or service included in the gross capitalized cost other than~~
30 ~~those items included in the disclosures required in subparagraphs~~
31 ~~(A) to (F), inclusive.~~
32 ~~(3) The vehicle identification number of the leased vehicle.~~

1 ~~(4) A brief description of a vehicle or other property being~~
2 ~~traded in and the agreed-upon value thereof if the amount due at~~
3 ~~the time of signing the lease or upon delivery is paid in whole or~~
4 ~~in part with a net trade-in allowance or the “Itemization of Gross~~
5 ~~Capitalized Cost” includes any portion of the outstanding prior~~
6 ~~credit or lease balance from the trade-in property.~~

7 ~~(5) The fee, if any, to be retained by the lessor for document~~
8 ~~preparation, which fee may not exceed fifty-five dollars (\$55)~~
9 ~~and may not be represented as a governmental fee.~~

10 ~~(6) The amount of any optional business partnership~~
11 ~~automation program fee to register or transfer the vehicle, which~~
12 ~~shall be labeled “Optional DMV Electronic Filing Fee.”~~

13 ~~(d) The lease contract shall contain, in at least 8-point boldface~~
14 ~~type, above the space provided for the lessee’s signature and~~
15 ~~circumscribed by a line, the following notice: “(1) Do not sign~~
16 ~~this lease before you read it or if it contains any blank spaces to~~
17 ~~be filled in; (2) You are entitled to a completely filled-in copy of~~
18 ~~this lease; (3) Warning—Unless a charge is included in this lease~~
19 ~~for public liability or property damage insurance, payment for~~
20 ~~that coverage is not provided by this lease.”~~

21 ~~(e) The lease contract shall contain, in at least 8-point boldface~~
22 ~~type, on the first page of the contract and circumscribed by a line,~~
23 ~~the following notice:~~

24
25 ~~“THERE IS NO COOLING-OFF PERIOD~~
26

27 ~~California law does not provide for a “cooling-off” or other~~
28 ~~cancellation period for vehicle leases. Therefore, you cannot later~~
29 ~~cancel this lease simply because you change your mind, decided~~
30 ~~the vehicle costs too much, or wish you had acquired a different~~
31 ~~vehicle. You may cancel this lease only with the agreement of~~
32 ~~the lessor or for legal cause, such as fraud.”~~

33 ~~(f) The lease contract shall contain, in at least 8-point boldface~~
34 ~~type, the following notice: “You have the right to return the~~
35 ~~vehicle, and receive a refund of any payments made if the credit~~
36 ~~application is not approved, unless nonapproval results from an~~
37 ~~incomplete application or from incorrect information provided by~~
38 ~~you.”~~

39 ~~(g) The lease contract shall be signed by the lessor and lessee,~~
40 ~~or their authorized representatives, and an exact copy of the fully~~

1 executed lease contract shall be provided to the lessee at the time
2 of signing.

3 ~~(h) A motor vehicle shall not be delivered under a lease~~
4 ~~contract subject to this chapter until the lessor provides to the~~
5 ~~lessee a fully executed copy of the lease contract.~~

6 ~~(i) The lessor may not obtain the signature of the lessee to a~~
7 ~~contract when it contains blank spaces to be filled in after it has~~
8 ~~been signed.~~

9 ~~(j) If the lease contract contains a provision that holds the~~
10 ~~lessee liable for the difference between (1) the adjusted~~
11 ~~capitalized cost disclosed in the lease contract reduced by the~~
12 ~~amounts described in subparagraph (A) of paragraph (5) of~~
13 ~~subdivision (b) of Section 2987 and (2) the settlement proceeds~~
14 ~~of the lessee's required insurance and deductible in the event of~~
15 ~~theft or damage to the vehicle that results in a total loss, the lease~~
16 ~~contract shall contain the following notice in at least 8-point~~
17 ~~boldface type on the first page of the contract:~~

18
19 ~~“GAP LIABILITY NOTICE~~
20

21 ~~In the event of theft or damage to the vehicle that results in a~~
22 ~~total loss, there may be a GAP between the amount due upon~~
23 ~~early termination and the proceeds of your insurance settlement~~
24 ~~and deductible. THIS LEASE PROVIDES THAT YOU ARE~~
25 ~~LIABLE FOR THE GAP AMOUNT. Optional coverage for the~~
26 ~~GAP amount may be offered for an additional price.”~~

27 ~~SEC. 2.~~

28 ~~SECTION 1.~~ Section 11713.1 of the Vehicle Code is amended
29 to read:

30 11713.1. It is a violation of this code for the holder of a
31 dealer's license issued under this article to do any of the
32 following:

33 (a) Advertise a specific vehicle for sale without identifying the
34 vehicle by its model, model-year, and either its license number or
35 that portion of the vehicle identification number that
36 distinguishes the vehicle from all other vehicles of the same
37 make, model, and model-year. Model-year is not required to be
38 advertised for current model-year vehicles. Year models are no
39 longer current when ensuing year models are available for
40 purchase at retail in California. Any advertisement that offers for

1 sale a class of new vehicles in a dealer's inventory, consisting of
2 five or more vehicles, that are all of the same make, model, and
3 model-year is not required to include in the advertisement the
4 vehicle identification numbers or license numbers of those
5 vehicles.

6 (b) Advertise the total price of a vehicle without including all
7 costs to the purchaser at time of sale, except taxes, vehicle
8 registration fees, the California tire fee, as defined in Section
9 42885 of the Public Resources Code, emission testing fees not
10 exceeding fifty dollars (\$50), actual fees charged for certificates
11 pursuant to Section 44060 of the Health and Safety Code, finance
12 charges, and any dealer document preparation charge. The dealer
13 document preparation charge shall not exceed fifty-five dollars
14 (\$55).

15 (c) (1) Exclude from an advertisement of a vehicle for sale
16 that there will be added to the advertised total price at the time of
17 sale, charges for sales tax, vehicle registration fees, the California
18 tire fee, the fee charged by the state for the issuance of a
19 certificate of compliance or noncompliance pursuant to a statute,
20 finance charges, and a dealer document preparation charge.

21 (2) The obligations imposed by paragraph (1) ~~is~~ *are* satisfied
22 by adding to the advertisement a statement containing no
23 abbreviations and that is worded in substantially the following
24 form: "Plus government fees and taxes, any finance charges, any
25 dealer document preparation charge, and any emission testing
26 charge."

27 (3) For purposes of paragraph (1), "advertisement" means an
28 advertisement in a newspaper, magazine, or direct mail
29 publication that is two or more columns in width or one column
30 in width and more than seven inches in length, or on a Web page
31 of a dealer's Web site that displays the price of a vehicle offered
32 for sale on the Internet, as that term is defined in paragraph (6) of
33 subdivision (e) of Section 17538 of the Business and Professions
34 Code.

35 (d) Represent the dealer document preparation charge or
36 certificate of compliance or noncompliance fee, as a
37 governmental fee.

38 (e) Fail to sell a vehicle to a person at the advertised total
39 price, exclusive of taxes, vehicle registration fees, the California
40 tire fee, the fee charged by the state for the issuance of a

1 certificate of compliance or noncompliance pursuant to a statute,
2 finance charges, mobilehome escrow fees, the amount of a city,
3 county, or city and county imposed fee or tax for a mobilehome,
4 and a dealer document preparation charge, which charges shall
5 not exceed fifty-five dollars (\$55) for the document preparation
6 charge and not to exceed fifty dollars (\$50) for emission testing
7 plus the actual fees charged for certificates pursuant to Section
8 44060 of the Health and Safety Code, while the vehicle remains
9 unsold, unless the advertisement states the advertised total price
10 is good only for a specified time and the time has elapsed.
11 Advertised vehicles shall be sold at or below the advertised total
12 price, with statutorily permitted exclusions, regardless of whether
13 the purchaser has knowledge of the advertised total price.

14 (f) (1) Advertise for sale, sell, or purchase for resale a new
15 vehicle of a line-make for which the dealer does not hold a
16 franchise.

17 (2) This subdivision does not apply to a transaction involving
18 the following:

19 (A) A mobilehome.

20 (B) A recreational vehicle as defined in Section 18010 of the
21 Health and Safety Code.

22 (C) A commercial coach, as defined in Section 18001.8 of the
23 Health and Safety Code.

24 (D) An off-highway motor vehicle subject to identification as
25 defined in Section 38012.

26 (E) A manufactured home.

27 (F) A new vehicle that will be substantially altered or modified
28 by a converter prior to resale.

29 (G) A commercial vehicle with a gross vehicle weight rating
30 of more than 10,000 pounds.

31 (H) A vehicle purchased for export and exported outside the
32 territorial limits of the United States without being registered
33 with the department.

34 (g) Sell a park trailer, as specified in Section 18009.3 of the
35 Health and Safety Code, without disclosing in writing to the
36 purchaser that a park trailer is required to be moved by a
37 transporter or a licensed manufacturer or dealer under a permit
38 issued by the Department of Transportation or a local authority
39 with respect to highways under their respective jurisdictions.

1 (h) Advertise free merchandise, gifts, or services provided by
2 a dealer contingent on the purchase of a vehicle. The term “free”
3 includes merchandise or services offered for sale at a price less
4 than the seller’s cost of the merchandise or services.

5 (i) Advertise vehicles, and related goods or services, at a
6 specified dealer price, with the intent not to supply reasonably
7 expectable demand, unless the advertisement discloses the
8 number of vehicles in stock at the advertised price. In addition,
9 whether or not there are sufficient vehicles in stock to supply a
10 reasonably expectable demand, when phrases such as “starting
11 at,” “from,” “beginning as low as,” or words of similar import
12 are used in reference to an advertised price, the advertisement
13 shall disclose the number of vehicles available at that advertised
14 price.

15 For purposes of this subdivision, in a newspaper advertisement
16 for a vehicle that is two model-years old or newer, the actual
17 phrase that states the number of vehicles in stock at the
18 advertised price shall be (1) printed in a type size that is at least
19 equal to one-quarter of the type size, and in the same style and
20 color of type, used for the advertised price, however, in no case
21 shall the phrase be printed in less than 8-point type size, and (2)
22 be disclosed immediately above, below, or beside the advertised
23 price without intervening words, pictures, marks, or symbols.

24 The disclosure required by this subdivision is in addition to any
25 other disclosure required by this code or any regulation regarding
26 identifying vehicles advertised for sale.

27 (j) Use the term “rebate” or similar words, including, but not
28 limited to, “cash back” in advertising the sale of a vehicle unless
29 the rebate is expressed in a specific dollar amount and is in fact a
30 rebate offered by the vehicle manufacturer or distributor directly
31 to the retail purchaser of the vehicle or to the assignee of the
32 retail purchaser.

33 (k) Require a person to pay a higher price for a vehicle and
34 related goods or services for receiving advertised credit terms
35 than the cash price the same person would have to pay to
36 purchase the same vehicle and related goods or services. For the
37 purpose of this subdivision, “cash price” has the meaning as
38 defined in subdivision (e) of Section 2981 of the Civil Code.

39 (l) Advertise a guaranteed trade-in allowance.

1 (m) Misrepresent the authority of a salesperson,
2 representative, or agent to negotiate the final terms of a
3 transaction.

4 (n) (1) Use the terms “invoice,” “dealer’s invoice,”
5 “wholesale price,” or similar terms that refer to a dealer’s cost for
6 a vehicle in an advertisement for the sale of a vehicle or advertise
7 that the selling price of a vehicle is above, below, or at either of
8 the following:

9 (A) The manufacturer’s or distributor’s invoice price to a
10 dealer.

11 (B) A dealer’s cost.

12 (2) This subdivision does not apply to either of the following:

13 (A) A communication occurring during face-to-face
14 negotiations for the purchase of a specific vehicle if the
15 prospective purchaser initiates a discussion of the vehicle’s
16 invoice price or the dealer’s cost for that vehicle.

17 (B) A communication between a dealer and a prospective
18 commercial purchaser that is not disseminated to the general
19 public. For purposes of this subparagraph, a “commercial
20 purchaser” means a dealer, lessor, lessor-retailer, manufacturer,
21 remanufacturer, distributor, financial institution, governmental
22 entity, or person who purchases 10 or more vehicles during a
23 year.

24 (o) Violate a law prohibiting bait and switch advertising,
25 including, but not limited to, the guides against bait advertising
26 set forth in Part 238 (commencing with Section 238) of Title 16
27 of the Code of Federal Regulations, as those regulations read on
28 January 1, 1988.

29 (p) Make an untrue or misleading statement indicating that a
30 vehicle is equipped with all the factory installed optional
31 equipment the manufacturer offers, including, but not limited to,
32 a false statement that a vehicle is “fully factory equipped.”

33 (q) Affix on a new vehicle a supplemental price sticker
34 containing a price that represents the dealer’s asking price that
35 exceeds the manufacturer’s suggested retail price unless all of the
36 following occur:

37 (1) The supplemental sticker clearly and conspicuously
38 discloses in the largest print appearing on the sticker, other than
39 the print size used for the dealer’s name, that the supplemental
40 sticker price is the dealer’s asking price, or words of similar

1 import, and that it is not the manufacturer's suggested retail
2 price.

3 (2) The supplemental sticker clearly and conspicuously
4 discloses the manufacturer's suggested retail price.

5 (3) The supplemental sticker lists each item ~~which~~ *that* is not
6 included in the manufacturer's suggested retail price, and
7 discloses the additional price of each item. If the supplemental
8 sticker price is greater than the sum of the manufacturer's
9 suggested retail price and the price of the items added by the
10 dealer, then the supplemental sticker price shall set forth that
11 difference and describe it as "added mark-up."

12 (r) Advertise an underselling claim, including, but not limited
13 to, "we have the lowest prices" or "we will beat any dealer's
14 price," unless the dealer has conducted a recent survey showing
15 that the dealer sells its vehicles at lower prices than another
16 licensee in its trade area and maintains records to adequately
17 substantiate the claims. The substantiating records shall be made
18 available to the department upon request.

19 (s) Advertise an incentive offered by the manufacturer or
20 distributor if the dealer is required to contribute to the cost of the
21 incentive as a condition of participating in the incentive program,
22 unless the dealer discloses in a clear and conspicuous manner
23 that dealer participation may affect consumer cost.

24 For purposes of this subdivision, "incentive" means anything
25 of value offered to induce people to purchase a vehicle,
26 including, but not limited to, discounts, savings claims, rebates,
27 below-market finance rates, and free merchandise or services.

28 (t) Display or offer for sale a used vehicle unless there is
29 affixed to the vehicle the Federal Trade Commission's Buyer's
30 Guide as required by Part 455 of Title 16 of the Code of Federal
31 Regulations.

32 (u) Fail to disclose in writing to the franchisor of a new motor
33 vehicle dealer the name of the purchaser, date of sale, and the
34 vehicle identification number of each new motor vehicle sold of
35 the line-make of that franchisor, or intentionally submit to that
36 franchisor a false name for the purchaser or false date for the date
37 of sale.

38 (v) Enter into a contract for the retail sale of a motor vehicle
39 unless the contract clearly and conspicuously discloses whether

1 the vehicle is being sold as a new vehicle or a used vehicle, as
2 defined in this code.

3 (w) Use a simulated check, as defined in subdivision (a) of
4 Section 22433 of the Business and Professions Code, in an
5 advertisement for the sale or lease of a vehicle.

6 (x) Fail to disclose, in a clear and conspicuous manner in at
7 least 10-point bold type on the face of a contract for the retail
8 sale of a new motor vehicle that this transaction is, or is not,
9 subject to a fee received by an autobroker from the selling new
10 motor vehicle dealer, and the name of the autobroker, if
11 applicable.

12 (y) As used in this section, the terms “make” and “model”
13 have the same meaning as is provided in Section 565.3 of Title
14 49 of the Code of Federal Regulations.